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OFFICE OF PETITIONS

In re Application of :
Machold, et al. :
Application No. 10/645,755 : ON PETITION
Filed: August 20, 2003 :
Attorney Docket No.:RADME-65147 :

This is a decision on the petition under 37 CFR 1.182, filed December 22, 2003, requesting that the above-identified application retain the presently accorded filing date with page 55 of the specification, as part of the original disclosure.

The petition is **dismissed**.

On August 20, 2003, the above-identified application was filed. However, on November 17, 2003, the Office of Initial Patent Examination mailed a "Notice of Omitted Items of Nonprovisional Application", stating that application had been accorded a filing date of August 20, 2003, and advising applicant that page 55 of the specification appeared to have been omitted.

In response, on December 22, 2003, applicant filed the present petition. Applicant argues that the instant application is a divisional of a prior filed application and that the instant application incorporated by reference the entirety of the prior application, which page 55 of the specification, therefore, the instant application was complete on filing.

The Notice permits applicant to either: (1) promptly establish prior receipt in the Office of the items at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted items and accept the date of such submission as the application filing date. An applicant asserting that the missing items were in fact deposited in the Office with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted items in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted items with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such omitted items and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).


An applicant may incorporate by reference the prior application by including in the application-as-filed, a statement that such specifically enumerated prior application or applications are hereby incorporated by reference. The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior applications(s) will permit an applicant to amend the divisional application to include any subject matter in such prior application(s), without the need for a petition. See MPEP 201.06(c).

In view of the incorporation by reference of the prior application, page 55 is not new matter if it was a part of the disclosure of the prior application. Prior to the first action on the merits, petitioner should file a preliminary amendment requesting entry of page 55 of the specification.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of August 20, 2003, using only the application papers present on filing.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of August 20, 2003.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions